

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to the accepted February 28, 2015 employment incident.

## **FACTUAL HISTORY**

On March 11, 2015 appellant, then a 60-year-old mail handler/equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2015 she sustained a right shoulder sprain as a result of cleaning up sacks on the floor of the employing establishment. A supervisor noted that appellant had refused to demonstrate how the injury occurred, and stated that he had not asked her to perform the task, as alleged.

An undated Form CA-16, authorization for examination and/or treatment, was issued by the employing establishment, and received into the case record on March 18, 2015.

By letter dated April 3, 2015, OWCP noted that the employing establishment challenged appellant's claim, based on the disagreement as to whether her supervisor instructed her to pick up sacks on the floor. It further advised appellant that she had not submitted sufficient evidence to establish her claim, as no medical evidence had been submitted. OWCP afforded her 30 days to submit additional evidence to the record.

On April 10, 2015 OWCP received several medical reports.

In a diagnostic report dated February 13, 2015, Dr. Mahejabeen Japanwalla, a Board-certified diagnostic radiologist, noted impressions of degenerative changes of the right acromioclavicular (AC) joint, and an ossific body along the superior aspect of the distal clavicle with underlying deformity and defect in the distal clavicle, probably related to an old chip fracture.

In a diagnostic report dated March 13, 2015, Dr. Bilha Fish, a Board-certified diagnostic radiologist, examined the results of another computerized radiography (CR) scan of appellant's right shoulder. She noted impressions of no rotator cuff tear; tendinosis of the proximal fibers of the supraspinatus tendon; and impingement of the acromioclavicular joint.

By decision dated July 21, 2015, OWCP denied appellant's claim for compensation. It found that she had not established a diagnosed medical condition causally related to the alleged incident.

On August 14, 2015 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a report dated September 29, 2015, Dr. Richard A. Boiardo, a Board-certified orthopedic surgeon, related that appellant sustained a work-related injury on January 16, 2015. He explained that appellant was hit from behind by the forklift sustaining injury to both ankles, right hip and right shoulder. Dr. Boiardo noted that x-ray of appellant's shoulder revealed evidence of AC joint arthropathy. X-rays of the right hip revealed evidence of osteoarthritis.

Dr. Boiardo concluded “In my opinion, this constellation of injuries is a direct cause and result of the injury that this patient had sustained on January 16, 2015.”

In an operative report dated February 8, 2016, Dr. Boiardo noted that he had performed various arthroscopic repairs on appellant’s right shoulder, without complications.

The hearing was held on March 17, 2016. During the hearing, the hearing representative noted that appellant had a separate workers’ compensation claim for a traumatic injury on January 16, 2015 under OWCP File No. xxxxxx531. Counsel clarified that appellant had two injuries to her right shoulder, and noted that the two injuries occurred in close temporal proximity. Appellant testified that, as a result of the January 16, 2015 employment incident, she developed problems with her right shoulder. She stated that she was on light duty when her supervisor ordered that she clean up sacks filled with mail off the floor. When lifting the sacks, appellant experienced pain in her shoulder. The hearing representative noted that she would keep the record open for another 30 days for submission of additional evidence.

In a report dated April 28, 2016, Dr. Boiardo related that appellant sustained injury to the right hip, both foot and ankle complexes, and right shoulder most particularly the right shoulder as a direct cause and result of a forklift injury sustained at work. As a direct cause and result of the injury that appellant had sustained on January 16, 2015 and subsequently exacerbated in another work-related injury on February 28, 2015 she sustained marked trauma to the right shoulder. Dr. Boiardo concluded, “In my opinion as a direct cause and result of this injury January 16, 2015, and exacerbated in February 2015, this patient sustained injury to the labral complex of the right shoulder, the right biceps tendon, acromioclavicular joint and subacromial bursa.[...] In all medical probability, in my opinion, again this constellation of injuries and the extensive surgery subsequent to them are a direct cause and result of the injuries that this patient had sustained in a forklift injury [January 16, 2015] and subsequently when she was lifting sacks of mail in February 2015.”

By decision dated May 5, 2016, the hearing representative found that appellant had not submitted medical evidence sufficient to establish causal relationship between the accepted February 28, 2015 employment incident and her right shoulder condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

The claimant has the burden of proof to establish by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>7</sup> An award of compensation may not be based on appellant’s belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is causal relationship between the employee’s diagnosed condition and compensable employment factors.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup>

### ANALYSIS

Appellant alleged that on February 28, 2015 she sustained a right shoulder condition as a result of lifting sacks of mail. OWCP accepted that the incident occurred as alleged. The Board

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<sup>5</sup> *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>7</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>8</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>9</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D’Wayne Avila*, 57 ECAB 642, 649 (2006).

<sup>10</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

<sup>11</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

finds that appellant has not submitted rationalized medical evidence sufficient to establish that the employment incident of February 28, 2015 caused or aggravated her diagnosed right shoulder condition.

In a report dated September 29, 2015, Dr. Boiardo related that appellant sustained a work-related injury on January 16, 2015. At that time, she was hit from behind by the forklift sustaining injury to both ankles, right hip, and right shoulder. An x-ray of the right shoulder showed evidence of AC joint arthropathy. In this report, Dr. Boiardo opined that appellant's right shoulder condition was caused by the January 16, 2015 employment incident. He did not note a history of injury on February 28, 2015.

In a subsequent report dated April 28, 2016, Dr. Boiardo again noted appellant's initial January 16, 2015 forklift incident under OWCP File No. xxxxxx531. He thereafter related that her right shoulder condition was exacerbated in a subsequent work-related incident on February 28, 2015 when she lifted sacks of mail. Appellant sustained labral complex of the right shoulder, the right biceps tendon, acromioclavicular joint and subacromial bursa. Dr. Boiardo concluded that, as a result of both these incidents, appellant required extensive right shoulder arthroscopic decompression and repair.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>12</sup> While Dr. Boiardo explained in very general terms that he believed the second employment incident of February 28, 2015 caused or aggravated appellant's right shoulder condition, he did not offer a rationalized medical explanation, with a biomechanical description of the event and its connection to the alleged aggravation, or an opinion on whether the aggravation was temporary or permanent. Lacking such an explanation, his report of April 28, 2016 is insufficient to establish causal relationship between the February 28, 2015 employment incident and appellant's diagnosed condition.<sup>13</sup>

The reports by the physicians interpreting diagnostic studies, including the reports from Dr. Japanwalla and Dr. Fish, also failed to address the cause of any of the diagnosed conditions. As such, these reports are of no probative value.<sup>14</sup>

The Board thus finds that appellant has not met her burden of proof.<sup>15</sup>

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<sup>12</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *S.C.*, Docket No. 16-1322 (issued January 18, 2017).

<sup>15</sup> When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a right shoulder condition causally related to the accepted February 28, 2015 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 6, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board